

REMARKS

The applicants appreciate the Examiner's thorough examination of the application and requests reexamination and reconsideration of the application in view of the preceding amendments and the following remarks.

Additionally, the applicant appreciates the telephone interview between the undersigned and the Examiner on February 26, 2004 with regard to the Office Action issued by the Examiner.

The Examiner rejects claims 1 and 3 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 2 of U.S. Patent No. 6,030,377 to *Linhares*, and rejects claims 1 and 3 under 35 USC § 102(e) as being anticipated by *Linhares*.

Claim 1 of the subject application is directed to a percutaneous myocardial revascularization marking therapeutic or diagnostic agent delivery system comprising a treatment catheter having a proximal end interconnected with a source of tissue ablative energy and distal end for applying that energy to the heart wall to create a channel herein, and a channel marking and drug delivery catheter subsystem connected to an imaging medium source and a source of a therapeutic or diagnostic agent and having a distal end proximate the distal end of the treatment catheter for applying both an imaging medium and the therapeutic or diagnostic agent in or proximate the channel.

As discussed in the telephone interview, the applicant noted that the applicant's independent claim 1 includes the feature of "a channel marking and drug delivery catheter subsystem connected to an imaging medium source and a source of a therapeutic or diagnostic agent". Independent method claim 3 also claims introducing both an imaging medium and a therapeutic or diagnostic agent into a heart wall. The applicants' channel marking and drug delivery catheter subsystem is connected to both an imaging medium source and a source of a

therapeutic or diagnostic agent. *Linhares* discloses marking catheter 16 which is connected to only one source, the source being an imaging medium source. *Linhares* clearly is only connected to one source, and does not disclose, teach or suggest connecting the marking catheter of *Linhares* to a second source, as claimed by the applicant.

The Examiner agreed with the applicant that *Linhares* fails to disclose, teach or suggest a channel marking and drug delivery catheter subsystem connected to an imaging medium source and a source of therapeutic or diagnostic agent as claimed by applicant. Accordingly, the Examiner agreed to withdraw the *Linhares* rejections. Therefore, the claims of the subject application are patentable over *Linhares*.

The Examiner also rejects claims 1-3 under 35 USC § 102(e) as being anticipated by U.S. Patent No. 6,023,638 to *Swanson*.

Swanson is directed to a system and method for conducting electrophysiological testing using high-voltage energy pulses to stun tissue. *Swanson* discloses an instrument 312 (such as a catheter or surgical probe) having an array of electrodes 318 as well as instruments 314 and 316.

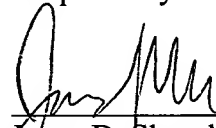
However, as discussed with the Examiner, *Swanson* fails to disclose a marking and therapeutic or diagnostic agent catheter delivery system as claimed by the applicant. *Swanson* does not disclose, teach or suggest such a catheter delivery system. In accordance with the Examiner's suggested amendments to place the claims in condition for allowance, the applicant has amended claims 1 and 3 to clarify that the present invention is a catheter delivery system.

As the applicant has adopted the Examiner's suggested amendments, and *Swanson* fails to disclose a marking and therapeutic or diagnostic agent catheter system, claims 1-3 are patentable over *Swanson*.

Each of the Examiner's rejections has been addressed or traversed. Accordingly, it is respectfully submitted that the application is in condition for allowance. Early and favorable action is respectfully requested.

If for any reason this Response is found to be incomplete, or if at any time it appears that a telephone conference with counsel would help advance prosecution, please telephone the undersigned or his associates, collect in Waltham, Massachusetts, (781)890-5678.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jason D. Shanske', is written over a horizontal line.

Jason D. Shanske
Reg. No. 43,915